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Attorneys for Defendant LifeMap Assurance  
Company

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**LISA EPHREM, dba CARR CITY,**

Plaintiff,

v.

**LIFEMAP ASSURANCE COMPANY,**

Defendant.

Case No.

**NOTICE OF REMOVAL**

Defendant LifeMap Assurance Company (“LifeMap”) files this Notice of Removal  
 (“Notice”) pursuant to 28 U.S.C. § 1446(a). In support of this Notice, LifeMap states:

### **COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

1. LifeMap is a defendant in a civil action commenced in the Circuit Court of the State of Oregon for the County of Multnomah entitled: *Lisa Ephrem, dba Carr City v. LifeMap Assurance Company*, Case No. 1308-12126 (the “state court action”).

2. Plaintiff served LifeMap with a copy of the Summons and Complaint in the state court action on August 26, 2013.

3. True and correct copies of the Summons and Complaint in the state court action are attached hereto as Exhibit A and are incorporated herein by this reference.

4. Exhibit A constitutes all processes, pleadings, and orders, served upon LifeMap in the state court action up to the present date.

5. In compliance with 28 U.S.C. § 1446(b), LifeMap filed this Notice within thirty (30) days of service of plaintiff’s Summons and Complaint.

6. In compliance with 28 U.S.C. § 1446(d), LifeMap will give written notice of the filing of this Notice to all adverse parties, and will file a copy of this Notice with the Clerk of the Circuit Court of the State of Oregon for the County of Multnomah.

### **STATEMENT OF GROUNDS FOR REMOVAL**

7. The United States District Courts have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331.

8. This case involves a claim against LifeMap that is within the jurisdiction conferred by 28 U.S.C. § 1331 because the Group Life Insurance Policy underlying plaintiff’s claim is an employee welfare benefit plan as defined by the Employee Retirement and Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.* See 29 U.S.C. §§ 1002(1), 1003(a). Because

plaintiff's state law breach of contract, breach of covenant of good faith and fair dealing, and tortious breach of good faith and fair dealing claims against LifeMap conflict with ERISA's exclusive civil enforcement provisions, they are completely preempted by ERISA. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004) (“[A]ny state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted.”).

9. Accordingly, LifeMap is entitled to remove this action to this Court under 28 U.S.C. §§ 1441(c); *see Davila*, 542 U.S. at 209 (“[T]he ERISA civil enforcement mechanism is one of those provisions with such ‘extraordinary pre-emptive power’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” (citations omitted)).

#### **PERTINENT FACTS AND APPLICABLE LAW**

10. Plaintiff Lisa Ephrem alleges that her alleged employee, Jimmy Zeko, was insured under a group life insurance policy. Plaintiff brings a claim against LifeMap under state law for breach of contract, breach of covenant of good faith and fair dealing, and tortious breach of good faith and fair dealing, based on the alleged failure to pay claimed benefits, and seeks a \$100,000 policy benefit plus costs and attorney fees. *See* Complaint ¶¶ 16-23 and prayer for relief.

11. The LifeMap insurance plan referenced in the Complaint is a Group Life Insurance Policy issued to plaintiff doing business as Carr City.

12. ERISA defines an “employee welfare benefit plan” as “any plan, fund or program” that is “established or maintained by an employer” to provide “to employees medical,

surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability [or] death.” 29 U.S.C. § 1002(1); *see Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985).

13. If an aggrieved individual has a potential claim for denied benefits under an ERISA plan, the sole and exclusive remedy is to file a claim under ERISA’s civil enforcement provision, 29 U.S.C. § 1132(a). *See Davila*, 542 U.S. at 214; *Tolumajian v. Frailey*, 135 F.3d 648, 653-54 (9th Cir. 1998).

14. Because plaintiff’s sole remedy against LifeMap under the ERISA plan arises under 29 U.S.C. § 1132, this Court has original jurisdiction over plaintiff’s claim against LifeMap under 28 U.S.C. § 1331 and 29 U.S.C. § 1003(a). *See Davila*, 542 U.S. at 209 (“[T]he ERISA civil enforcement mechanism is one of those provisions with such ‘extraordinary pre-emptive power’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” (citations omitted)).

WHEREFORE, LifeMap hereby removes the above-entitled action, now pending in the Circuit Court of the State of Oregon for Multnomah County, to the United States District Court for the District of Oregon, Portland Division.

DATED this 24<sup>th</sup> day of September, 2013.

GARVEY, SCHUBERT & BARER

By s/ Eric A. Lindenauer  
Eric A. Lindenauer, OSB #833721  
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Kathryn L. Ball, OSB #115754  
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Tel: (503) 228-3939  
*Of Attorneys for Defendant LifeMap  
Assurance Company.*

Rec'd 8/26/13  
4:20 p.m.  
via process server  
by J. Collins

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

LISA EPHREM, dba CARR CITY  
Plaintiff,  
v.  
LIFEMAP ASSURANCE COMPANY  
Defendant.

Case No. 130812126  
SUMMONS

TO: LifeMap Assurance Company  
c/o Michael T. Mudrow  
Agent for Service of Process  
100 SW Market Street  
Portland, OR 97201

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within (30) days from the date of service of this summons upon you, and in the case of your failure to do so, for want thereof, plaintiff will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

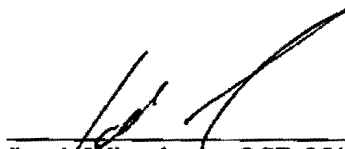
You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator with 30 days along with the required filing fee.

PAGE 1 – SUMMONS

JACOB WIESELMAN  
WIESELMAN LAW GROUP  
312 NW 10<sup>th</sup> AVE., SUITE 200  
PORTLAND, OR 97209  
503.697.7271  
FAX: (503) 697.9299  
JACKW@WLAW-GROUP.COM

1 It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff  
2 does not have an attorney, proof of service upon the plaintiff.

3 If you have any questions you should see an attorney immediately. If you need help in  
4 finding an attorney, you may contact the Oregon State Bar Lawyer Referral Service online at  
5 [www.oregonstatebar.org](http://www.oregonstatebar.org) or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-  
6 free elsewhere in Oregon at (800) 452-7637.  
7

8  
9  
10   
11 Jacob Wieselmann, OSB 05100  
12 Wieselmann Law Group, LLC  
13 312 NW 10<sup>th</sup> Ave., Suite 200  
14 Portland, OR 97209  
15 503.697.7277  
16 [jackw@wgroup-law.com](mailto:jackw@wgroup-law.com)  
17 Attorney for Plaintiffs

18 TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby  
19 directed to serve a true copy of this summons, together with a true copy of the complaint  
20 mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this  
21 summons is directed, and to make your proof of service on the reverse herein or upon a separate  
22 similar document which you shall attach hereto  
23  
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18   
19 Jacob Wieselmann, OSB #05100,  
20 Attorney for Plaintiff

PAGE 2 – SUMMONS

JACOB WIESELMAN  
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ENTERED

AUG 21 2013

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CIRCUIT COURT  
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

**12126**

LISA EPHREM, dba CARR CITY

Plaintiff,

v.

LIFEMAP ASSURANCE COMPANY

Defendants.

Case No.

**130812126**

COMPLAINT

NOT SUBJECT TO MANDATORY  
ARBITRATION

Amount in Controversy: \$100,000

**INTRODUCTION**

This action is brought by Lisa Ephrem, dba Carr City, an automobile wholesale and retail sales company. Carr City purchased from defendant LifeMap Assurance Company a group life insurance policy for the benefit of Carr City's employees. Claim for benefits was made following the death of employee Jimmy Zeko. Defendant LifeMap Assurance Company denied the claim and this action follows.

**First Claim for Relief**  
**(Breach of Contract)**

1.

Plaintiff Lisa Ephrem is a resident of Happy Valley, Oregon. She is licensed by the Oregon Department of Motor Vehicles as an automobile dealer and authorized by the Corporation Division of the Oregon Secretary of State to conduct her business under the name

1 “Carr City.” She is the administrator of and a fiduciary in relation to the group life insurance  
2 contract at issue herein

3  
4 2.

5 Defendant LifeMap Assurance Company (“LifeMap”) is an insurance company with  
6 principal place of business in Portland, Oregon. Prior to April 1, 2012, LifeMap was known as  
7 Regence Life and Health Insurance Company

8 3.

9 In or about April of 2011, Ms. Ephrem sought life and accidental death and  
10 dismemberment insurance for the employees of Carr City, her growing automobile sales  
11 company.

12 4.

13  
14 Donovan Rayfield is an insurance producer with offices in Battle Ground, Washington.  
15 Mr. Rayfield is authorized to represent LifeMap including accepting applications on its behalf.  
16 Mr. Rayfield has received payment in the form of commissions in return for placing contracts of  
17 insurance with LifeMap. He is also authorized to place insurance with other insurance  
18 companies.

19 5.

20 With the assistance of Mr. Rayfield, Ms. Ephrem completed and signed a LifeMap  
21 application for a group life insurance policy for her employees.

22 6.

23 LifeMap issued a contract of insurance (the “Policy”) with effective date of April 1, 2011  
24 covering Carr City employees including Jimmy Zeko. The Policy was issued in exchange for  
25

26  
PAGE 2 – COMPLAINT



1 premium paid and to be paid by Carr City.

2 7.

3 On April 25, 2012, James Zeko passed away.

4 8.

5 Despite timely claim, LifeMap has refused to pay the death benefit due under the Policy.

6 9.

7  
8 By letter of October 30, 2012, LifeMap denied the claim explaining that it had been  
9 unable to "validate employment of Jimmy Zeko." A copy of that letter is attached hereto as  
10 Exhibit A and incorporated herein.

11 10.

12 By letter of November 19, 2012, Plaintiff sought review of LifeMap's denial and  
13 submitted documents evidencing Mr. Zeko's employment by Carr City. A copy of that  
14 submission is attached hereto as Exhibit B and incorporated herein.

15 11.

16  
17 By letter of January 18, 2013 from LifeMap, the review of denial was rejected. A copy  
18 of that letter is attached hereto as Exhibit C and incorporated herein.

19 12.

20 All conditions precedent to performance of the Policy were completed

21 13.

22  
23 At all times relevant, Plaintiff performed or stood ready, willing and able to perform her  
24 duties under the Policy.

25 \\\

26  
PAGE 3 – COMPLAINT

14.

LifeMap's refusal to pay death benefits in relation to the death of James Zeko constitutes breach of the Policy contract.

15.

As a consequence of said breach, Plaintiff has been injured.

**SECOND COUNT**

(Breach of Covenant of Good Faith and Fair Dealing)

16.

Plaintiff incorporates by reference Paragraphs 1 through 13 set forth above as if fully set forth herein.

17.

LifeMap had a duty to exercise in good faith the contractually granted discretion allowed to it under the Policy.

18.

LifeMap's actions constitute a breach of the covenant of good faith and fair dealing that is implied in the Policy

19.

As a consequence of said breach, Plaintiff has been injured.

**THIRD CLAIM FOR RELIEF**

(Breach of Covenant of Good Faith and Fair Dealing-Sounding in Tort)

20.

Plaintiff incorporates by reference Paragraphs 1 through 13 set forth above as if fully set forth

1 herein.

2 21.

3 LifeMap had a duty to exercise in good faith the contractually granted discretion allowed  
4 to it under the Policy.

5 22.

6 LifeMap's failure to pay the death benefits without a reasonable basis constitutes a  
7 tortious breach of the duty of good faith and fair dealing that is implied in the Policy.

8 23.

9 As a consequence of said breach, Plaintiff has been injured.

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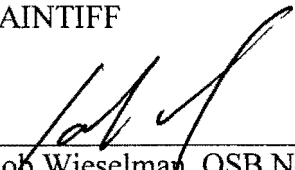
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment, as follows:

1. **On each of the First through Third Claims for Relief** (*Breach of Contract; Breach of Covenant of Good Faith and Fair Dealing in contract; in tort*):
  - a. Judgment against LifeMap Insurance Company in the amount of \$100,000; the amount due but unpaid in relation to James Zeko, and,
  - b. Award of legal fees and costs as allowed by ORS §742.061.
  - c. An order of the Court that Defendant perform its obligation under the Policy by paying the death benefit as required;
2. such other and equitable damages as may be deemed appropriate by the Court.

PLAINTIFF

By

  
\_\_\_\_\_  
Jacob Wieselmann, OSB No. 05100  
Wieselmann Law Group

Trial Attorney: Jacob Wieselmann

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF REMOVAL** was served on:

Jacob Wieselmann  
Wieselmann Law Group  
312 NW 10<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209

jackw@wgroup-law.com  
*Attorney for Plaintiff*

by mailing to him a copy of the original thereof, contained in a sealed envelope, addressed as above set forth, with postage prepaid, and deposited in the mail in Portland, Oregon, on September 24, 2013.

s/ Eric A. Lindenauer

Eric A. Lindenauer, OSB #833721

PDX\_DOCS:506352.1 [30324.02100]